

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 166 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ASHOK MINERAL AND CHEMICALS

Versus

GUJARAT IND. CO.OP.BANK LTD. & ANR.

Appearance:

MR RJ OZA for Petitioner
None present for Respondent No. 1
MR SV RAJU for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The brief facts of the case are that the Gujarat Industrial Cooperative Bank Ltd., the respondent no.2 herein, filed a Lavad case no.448/83 against the petitioner before the Board of Nominees appointed under the provisions of the Gujarat State Cooperative Societies Act, at Rajkot for

recovery of Rs.29648-92 with running interest and penalty interest with effect from 1-1-1983. In that suit, an application has been filed by the bank for attachment before judgment. Though the matter was posted for hearing of the aforesaid application and the arguments have been heard thereon, the learned Board of Nominees has passed the final award on 17th October, 1984 and decreed the Lavad case of the respondent Bank against the petitioner. The petitioner has taken up the matter before the Gujarat State Cooperative Tribunal at Ahmedabad. The Tribunal has decided the appeal in favour of the petitioner and the matter has been remanded back to the Board of Nominees and a condition has been imposed upon the petitioner to make the payment of 25% of the decretal amount to the respondent bank and also to pay Rs.200/- towards the costs. The amount as directed to be paid by the Tribunal could not be paid by the petitioner as the judgment of the Tribunal could not be received by him in time. In the circumstances, the bank has initiated the proceeding to auction the property of the petitioner. The petitioner filed a Review application no.3/85 in his appeal before the Tribunal and the prayer has been made for stay of the execution and implementation of the award. In the Review application, the petitioner has stated that he is ready and willing to deposit the amount as directed by the Tribunal, if a reasonable time is granted. The Tribunal under its order dated 20th May, 1985 stayed the implementation and execution of the order of the learned Board of Nominees on a condition to deposit 25% amount within two days from the date of the order i.e. on or before 22nd May, 1985. It is not in dispute that the amount of Rs.9770/-, 25% of the decretal amount, has been deposited by the petitioner in the bank on 22nd May, 1985 i.e. within time as directed by the Tribunal. The Review application has been decided on 23rd October, 1985 and the same has been dismissed.

2. The counsel for the petitioner contended that once the Tribunal has protected the petitioner by interim relief on condition of depositing 25% amount of the award, the Review application could not have been dismissed. It appears that while deciding the review application finally, the Tribunal has lost sight of the order made by it, by way of the interim relief in the Review application. Lastly, it has been contended by the learned counsel for the petitioner that it was the only question of extension of time earlier granted for depositing of 25% of the decretal amount, and as such, the Tribunal should have extended the same, more so, when the amount has been deposited by the petitioner in

pursuance of its order and within stipulated period.

3. On the other hand, the counsel for the respondent contended that the petitioner has not deposited the amount as directed by the Tribunal within a stipulated period, and as such, no further indulgence should be granted to the petitioner.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The counsel for the respondent does not dispute that in the Review application, the Tribunal made the order for depositing of the 25% of the decretal amount by the petitioner within a stipulated period and the petitioner has deposited the aforesaid amount within time. This court has granted the interim relief in terms of para no.9(B) and the proceedings of the suit remained stayed for all these years. The Tribunal has, while deciding the appeal filed by the petitioner, granted indulgence to the petitioner and an opportunity has been given to defend the suit on payment of 25% of the decretal amount. The appellate court has found that the award which has been made by the Board of Nominees while the matter posted for the order on the application for attachment before judgment to be illegal and arbitrary. The award which has been made in the present case, when the matter was only posted for hearing on an application for attachment before judgment cannot be said to be procedurally correct. It is a case where the Board of Nominees has committed a serious procedural illegality which has affected the ultimate decision in the case. This procedural illegality has been corrected by the Tribunal though subject to the condition of payment of 25% of the decretal amount by the petitioner within stipulated period. The petitioner could not deposit that amount for the given reasons and the Tribunal has considered it to be prima-facie good reason and further indulgence has been granted by extending the period for depositing the said amount though by way of the interim relief. I find sufficient merits in the contention of the counsel for the petitioner that it was a case of extension of time for depositing the amount. It appears that while making the final order, the Tribunal has lost the sight of the fact that by interim relief, the petitioner has been protected. It is not the case of the respondent that the Tribunal has no jurisdiction whatsoever to extend the time for depositing the amount as ordered earlier.

5. Taking into consideration the totality of the facts of the case, I am of the opinion that the judgment

of the Tribunal rejecting the Review application of the petitioner cannot be allowed to stand. It is true that there may not be error apparent on the face of the order made by the Tribunal earlier and there may not be good ground for review, but it was a case of extension of time which has been granted for depositing of the amount for which I am satisfied that the Tribunal has all the powers.

6. In the result, this Special Civil Application succeeds and the same is allowed. The order of the Tribunal dated 23rd October, 1985 is set aside and it is hereby ordered that the time for depositing of the amount of 25% of the decretal amount is extended upto 22nd May, 1985. The Board of Nominees is directed to decide the suit expeditiously. Rule is made absolute with no order as to costs.

zgs/-